IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 1615/1998

FATEH SINGH MEHARU
Vs.
THE RAJASTHAN STATE WAREHOUSING CORPORATION, JAIPUR

Date: 13.11.2006.

HON'BLE MR. K.S. RATHORE, J.

Mr. Shiv Charan Gupta for the petitioner.
Mr. Indresh Sharma for
Mr. Alok Sharma for the respondent.

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The short controversy in this writ petition is that the petitioner was given promotion on the post of Warehouse Manager w.e.f. 22.06.90 instead of 14.04.86, from the date his juniors have been given promotion vide order dated 25.09.97.

The case of the respondent is that the petitioner was appointed as Technical Assistant in the respondent Corporation w.e.f. 30.06.71 and was came to be promoted on the post of cadre Warehouse Manager on absolutely ad hoc basis w.e.f. 22.08.87. The promotion on regular basis to the post of Warehouse Manager came to be considered in the DPC meeting on 05.09.97 against the vacancies arise in the year 1986. The record of the petitioner was considered by the DPC of previous 7

years which was relevant to be considered for the purpose of promotion against the vacancies of the year 1986 for the post of Warehouse Manager. It was found that vide order dated 19.12.80, the punishment of stoppage of one annual grade increment was imposed upon the petitioner. Thus, the petitioner was not found fit to be promoted to the post of Warehouse Manager against the vacancies of the year 1986. The persons junior to the petitioner were also considered for promotion to the said post and their record was found good in comparison to the petitioner and were given promotions against the vacancies of the year 1986. The petitioner was also given promotion on the post Warehouse Manager in the year 1990 when he was found suitable by the DPC.

Learned counsel for the petitioner has placed reliance on the judgment rendered by the Division Bench of this Court in the case of ***Rajasthan State Warehousing Corporation Vs. Bharat Singh, decided on 07.03.2003 and reported in 2003(2) WLC(Raj.) 457,*** wherein the Division Bench has held that as the respondent remained on ad hoc promotion for 10 whereafter order for regular promotion was passed in 1997- Continuity of respondent on ad hoc promotion for such length of time deemed to have washed off averse entry for 1981-82 for purpose of denying promotion-

Departmental Promotion Committee directed to consider respondent's case for promotion afresh since 14.04.86 instead of 22.06.90. Before the Division Bench it was contended on behalf of the appellant that the Annual Performance Report for the 1979-80 of the respondent, which was duly communicate to him, contained an adverse entry. Seven year's Annual Performance Report was required to be considered in respect of promotion of the candidates against the vacancy of 1986. Since the respondent had an adverse entry for the aforesaid period, namely 1979-80, he was not found eligible for promotion by the Departmental Promotion Committee for the post of Warehouse Manager.

The Division Bench after considering the case has observed as under:-

> "In the instant case, the respondent continued on the post of Warehousing Manger on ad hoc basis right from 1987 until the order dated September 25, 1997 was passed, whereby he was promoted to the said post on regular basis with effect from June 22,1990. Before his regular promotion, the respondent had already put in a decade of service as Warehousing Manager on ad hoc basis. Thus, the ad hoc promotion to the post of Warehousing Manager could hardly be considered as a stop gap or a temporary arrangement. In case where ad hoc promotion was to last for several years, it should be assumed

> that the service record of the promotee must have been considered, at least once during that period, to judge his suitability for continuing him in the post for so long. It seems to us that the adverse entry of 1981-82 was not considered so grave as to deny the respondent promotion to the post of Warehousing Manager, else he would not have been continued for a period of ten years on the said post on ad hoc basis. The question whether promotion on ad hoc basis will wash off adverse entry in the service record of an employee, will depend upon the facts an circumstances of each case. In the case in hand, because of the fact that the respondent continue on ad hoc basis for a long period of time, we are of the view that the adverse entry of 1981-82 stood washed off and the Departmental Promotion Committee ought not to have considered the same for the purpose of denying promotion to the respondent."

In the instant case also, the petitioner was continuing on the post of Warehouse Manager since 22.08.87 and the DPC was held on 05.09.97. Thus, more than ten years service has been rendered by the petitioner. Thus, the ratio decided by the Division Bench of this Court in the aforementioned case, squarely covers the controversy involved in the present writ petition. On account of punishment of stoppage of one annual grade increment, the petitioner was not considered against the vacancies occurred in the year 1986. The adverse entry as per the ratio decided by the

Division Bench of this Court in the aforementioned case of ***Rajasthan State Warehousing Corporation Vs. Bharat Singh (supra),*** stood washed off.

Therefore, the respondent Department is directed to consider the case of the petitioner afresh keeping in view the fact that the adverse entry of 1979-80 stood expunged and washed off.

The writ petition stands allowed.

(K.S. RATHORE),J.

/KKC/